

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

November 18, 2004

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, November 18, 2004, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Morris K. Dunlap, Chair; Harold Warner Jr. Vice-Chair; Darrell Downing; Bud Hentzen; Ronald Marnell; Bob Hernandez; Elizabeth Bishop; M.S. Mitchell; Denise Sherman; Gary K. Gibbs; and Frank Garofalo. John W. McKay Jr., Bill Johnson and James Barfield were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Supervisor; Neil Strahl, Senior Planner; Jess McNeely, Associate Planner; Jamsheed Mehta, Transportation Supervisor; Nancy Harvieux, Principal Planner Transportation Division and Lisa Estrada, Recording Secretary.

❖ PLANNING COMMISSION ITEMS

1. Approval of amended October 7, 2004 meeting minutes CASE No. CON2004-32, and

DUNLAP Agenda item Number 1 is approval of minutes. We have a different situation today, the sand extraction case, Conditional Use 2004-32; we have a correction on the minutes. The minutes that we approved last meeting said that it failed on a 5-4 vote but the fact of the matter is it passed on a 5-4 vote. These are amended minutes.

MOTION: Approve as amended.

WARNER moved, **DOWNING** seconded the motion.

BISHOP I'm curious, I know that the County Commission considered this case yesterday, were they given a copy of the minutes prior to the correction?

SCHLEGEL We did give them a copy of the corrected minutes.

DUNLAP What did they do with the request?

SCHLEGEL They deferred action for 30 days.

VOTE ON MOTION: 11-0

Approval of November 4, 2004 meeting minutes

MOTION: To approve.

WARNER moved, **DOWNING** seconded the motion, and it carried (9-0-2) **GAROFALO** and **MITCHELL** abstain.

❖ PUBLIC HEARINGS –SUBDIVISION ITEM

2. **Case No.: DR2004-10 – Request Amendment to the Wichita-Sedgwick County Subdivision Regulations regarding public utility easements associated with lot splits, plats and vacations**

NEIL STRAHL Planning staff outlined the proposed amendment containing staff's recommendations.

MITCHELL I have handed out language different than the blue sheet (staff recommendation). I'm the one that raised this issue, which lead to the proposed amendment saying the Subdivision Regulations did not provide for incremental easements because of lot splits and vacations. I don't disagree on plats, that that is an appropriate decision. Lot splits and vacations, I think, are a taking, and I am aware of the position of the City and the County legal staff that, in their opinions, these are not takings. I still believe that it is an imposition on people making application that has nothing to do with utilities and existing easements to be required to give those provisional easements. I think that whether it is 2 feet, or 10 feet, and in isolated locations, there is no provision in the regulations currently to do that, and that information needs to be provided to contractors and staff to know those additional easements are available if and when they ever needed to work in those areas. I don't see where it accomplishes anything and I think it is an imposition on the applicant.

MOTION: That either you adopt the language that I have suggested or something similar to that.

MITCHELL moved, **MARNELL** seconded the motion.

11/18/04

M.S. Mitchell's Edit of DR 04-10 – Subdivision Regulation Amendments

Section 7-205 (A) Public Easements

Section 7-205 (A) **Public Utility Easements.** Public utility easements shall be provided where necessary. Easements for *proposed utilities* shall be centered on rear or side lot lines and shall be at least 20-feet wide along rear lot lines and 10-feet wide along side lot lines. *Where necessary to protect existing tree rows from damage, such easements may be widened appropriately not to exceed 30 feet. Except when specifically required by the Planning Commission, where a lot split or vacation case is already served by existing utilities in easements that are less than the minimum widths required for proposed utilities, additional easement widths may be required only if consent to dedicate such additional easement is obtained from all adjacent properties in the entire block.* Utility easements for street lighting purposes shall not be required to exceed 10 feet in width. If a utility easement is to also be used for drainage purposes, the easement shall be designated on the plat as both a utility and drainage easement, and additional width may be required. For plats or lots splits in areas with existing water and sewer mains, a public sewer easement or public sewer or water line easement may be required to protect a private sewer or water line across one ownership to serve another ownership with the approval of the System Planning Division of the City of Wichita Water and Sewer Department.

MARNELL I would like to make a comment to be sure I understand, this lot split is in the middle of the block and what you would be doing is taking a wider easement that might be right down the center of 20 lots which would serve no useful purpose whatsoever.

WARNER If this were approved with this wording, would you require a person requesting the lot split to run up and down the block to get consent for the utility easement? This would put a burden on the applicant trying to get a lot split.

DUNLAP We are having a discussion here on the motion.

MARNELL Maybe it should be the City being required the same land grab from everybody else.

BISHOP I am trying to understand why this is serving no purpose. This says where the lot contains "existing utility easements".

MARNELL Inaudible

BISHOP The way that I see it, it is one way of bringing folks gradually in compliance with what is needed for today's technology. I hope we can hear from Public Works.

MARNELL Almost any place where there is a lot split it won't be every other lot until we are down it will be....

BISHOP It is the same or similar argument that we have with street dedications.

MITCHELL Elizabeth to answer your question, if my land is the problem, yes it would be (inaudible).

BISHOP But I guess the question is who has the burden of securing all that easement. Is it the applicant or the City who is required to obtain it, and is it something that the applicant would be forced to do or optional, and in this case, it is never going to happen.

MITCHELL Unless the Planning Commission requires it without the intent you would not require any incremental easement.

DUNLAP Joe I know you haven't had a long time to read Mr. Mitchell's language, but is that applicable?

JOE LANG LAW DEPARTMENT I have spent about 20 seconds looking at this here, and I would like to give this a close review. I don't want to do anything that the City or County does not have a right to with these requirements. I want to review the wording closer.

DUNLAP I wonder if you can defer this again so that we can get the wording out. I'm hearing different attitudes, and maybe we should have a smaller group sit down and talk about this, and let Subdivision sit down and talk about this.

AMENDED MOTION: Defer this Item to return to Subdivision Committee for clarification and bring back to MAPC at another time.

MITCHELL moved, **MARNELL** seconded the motion.

LANG Mr. Chairman, I am not sure your last action was closing of the public hearing. You may want to make sure.

DUNLAP Is there anyone in the public who would like to speak on this item? We will close the public hearing at this point.

AMENDED MOTION VOTE CARRIED: 11-0.

❖ **PUBLIC HEARINGS – ZONING ITEMS**

- 3a. **Case No.: ZON2004-57 (Associated with CON2004-37) – Thomas K. Yun (owner); Rick Rexroat (agent) Request Zone change from “SF-5” Single-family Residential to “LC” Limited Commercial on property described as;**

AND

- 3b. **Case No.: CON2004-37 (Associated with ZON2004-57) - Thomas K. Yun (owner); Rick Rexroat (agent) Request Conditional Use to permit a nightclub on property described as;**

The East 250 feet of Lot 1, Cypress Addition, Wichita, Sedgwick County, Kansas together with the south 25 feet of the north 225 feet of the s 1,318.65 feet of the east 342 feet of the Southeast Quarter of Sec. 17-28-1E. Generally located North of 47th Street South and west of Broadway.

BACKGROUND: The applicant requests LC zoning on an approximately 25-foot by 292-foot area currently zoned SF-5. The zone change is necessary for parking on this parcel supporting the owner's commercial uses. The applicant also requests a Conditional Use for a nightclub in an existing building, currently housing a restaurant. Nightclubs are a permitted use in the LC district, but require a conditional use when within 200 feet of residential zoning. The application area is currently permitted for a restaurant/drinking establishment (DE-R, requiring that greater than 50% of sales come from food); the site is not permitted for an outright tavern or drinking establishment. The applicant's site plan indicates that the nightclub conditional use property is 53 feet from developed single-family residential property. The proposed nightclub building is approximately 150 feet from single-family residences.

The 1.45-acre site is located on the west side of South Broadway, approximately 1,090 feet north of 47th Street South. The character of the surrounding area is that of general commercial uses along the Broadway Avenue corridor and single-family residential uses to the west of that corridor, surrounding the application area to the north and west. A total of four single-family residences abut the parcel owned by the applicant. A portion of the application area is in the FEMA designated 100-year flood plain; a self-storage facility on this site caused increased drainage problems with the residential neighbors west of the site.

CASE HISTORY: The conditional use application area was platted as a part of Lot 1 Cypress Addition in 1974. The zone change site is an unplatted parcel. This application area received a conditional use for a self-storage facility in 2002 (CON2002-36). The site had difficulties meeting the landscaping, screening, fencing, and drainage requirements of that conditional use, requiring the involvement of residential neighbors and the Office of Central Inspections.

ADJACENT ZONING AND LAND USE:

NORTH: “GC”, “SF-5”	Hotel, Single-family residences
SOUTH: “GC”	Auto repair
EAST: “GC”	Auto repair, Camping trailer sales
WEST: “SF-5”	Single-family residences

PUBLIC SERVICES: The subject property fronts Broadway Avenue, which is a four-lane arterial street with a 50-foot half-street right-of-way at this location. The current traffic volume on Broadway is approximately 15,084 vehicles per day. The 2030 Transportation Plan designates that Broadway remain a four-lane arterial, and estimates that the traffic volume will increase to approximately 19,000 vehicles per day. Traffic generated by the property as a nightclub would not be significantly different than the traffic currently generated by the existing restaurant. The subject property has all other public utilities.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for “Commercial” development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan Objective II.B. is to “Minimize the detrimental impacts of higher intensity land uses and transportation facilities located near residential living environments.”

The Unified Zoning Code requires a Conditional Use for a nightclub when it is located within 200 feet of residences. As the application area is not currently permitted as a tavern or drinking establishment, approval of a nightclub conditional use would introduce a drinking establishment on this site.

RECOMMENDATION: Residential neighbors north and west of the application area have contacted MAPD in opposition to the requested conditional use for nightclub. The residents cite problems with the existing conditional use for self-storage, and concerns about late night noise from the parking lot and proposed nightclub near their residences. Based upon information available prior to the public hearings, planning staff recommends that the request for a zone change be APPROVED, and the request for the Conditional Use be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is that of general commercial uses along the Broadway corridor, and single-family residential uses to the west of that corridor, surrounding the application area to the north and west. A total of four single-family residences abut the parcel owned by the applicant. While the requested conditional use is not out of character with the other businesses fronting Broadway, a nightclub and associated parking is out of character with nearby single-family residences due to late hours and noise concerns.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned “LC” Limited Commercial, which accommodates office, retail, commercial and complementary land use. The site is suitable for the existing restaurant and existing self-storage conditional use.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Currently the sale of alcoholic beverages is limited by the applicant's DE-R permit. Approval of this request would remove this limitation, which could have detrimental impacts on the surrounding residences, considering their proximity to the proposed nightclub and associated parking.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Comprehensive Plan does not contain guidelines specifically for nightclubs, drinking establishments or taverns. However, the Plan does have an objective to minimize detrimental impacts of higher intensity land uses located near residential living environments
5. Impact of the proposed development on community facilities: It is possible that approval of this request could result in an increased demand for police services.

JESS MCNEELY Planning staff presented the staff report.

HENTZEN Do you know if there has been any new residences built in that area that are opposed? Have there been any new applications to build a house?

MCNEELY Not that we know of, as far as I know all residential lots surrounding the application area to the north and to the west have all been developed with single-family residences.

HENTZEN Is that a railroad on to the west?

AUDIENCE Yes it is.

GIBBS Was not the area that is outlined in the drawing that we have been given; was that not operated at once as a private club or a nightclub in the past, and if so how did it operate under a Conditional Use if there was no Conditional Use granted?

MCNEELY Some of the single-family residents north and west of here tell me at one time there was a drinking establishment there, and I would assume that basically it was an existing non-conforming use when it took place. It hasn't existed in several years. If they had continued use of the nightclub on that site they would have existing non-conforming use rights or grand fathered rights, and would not need this Conditional Use.

GIBBS I am a residence of that area and I know there used to be a club attached in the outlined area.

MCNEELY The residential area that contacted us stated that when there was a nightclub there they had problems with noise and broken bottles, and they therefore did not want a nightclub.

BISHOP I thought you said that there was an existing business there that had a different type of license, which was not classified as a nightclub, but where there could be drinking but the license required a certain amount of food to be sold. It has to be primarily a restaurant. Does the license address hours of operation or anything like that?

MCNEELY I don't believe so. A license for restaurant drinking establishment in which greater than 50% of your sales must come from food does not require a Conditional Use, so there is no distance consideration between it and the residences, such as for a nightclub or a DE Drinking Establishment.

WARNER You mentioned the storage units and that they are not in compliance, is that under same the same ownership?

MCNEELY Yes.

DUNLAP However that's not part of this application.

MCNEELY Exactly.

DUNLAP You are taking a measurement from the building to the houses or to the edge of the property where the houses are located.

MCNEELY That would be to the edge of the property.

DUNLAP So the distance from the building to the house itself is considerably greater?

MCNEELY Probably about 200 feet. If you look at this drawing right here, if you went from a residential property right here to the building right here, that is approximately 150 feet, so if you think about the length of a typical urban residential lot.

MITCHELL On the sketch, there is a dashed line that seems to limit a boundary for a closed nightclub?

MCNEELY Right that would be the dash line of the existing fence separating the storage units.

MITCHELL Inside the building from the northwest corner of that dashed line to the residence do you know what that distance is?

MCNEELY No, I don't. Even though part of that drawing designates a part of the building for proposed nightclub, the Conditional Use application includes all of the required parking that you see to within 53 feet of the residential.

GAROFALO I realize that the storage unit and the Conditional Use permit doesn't apply to this except the applicant is also asking for a Conditional Use permit, and my question is do you know why the applicant on the storage properties hasn't complied with the Conditions of the Conditional Use Permit?

MCNEELY I couldn't tell you why.

GAROFALO Has he ignored it.

MCNEELY I checked with Kurt Schroeder on the issues of the other Conditional Use, they had an engineering drainage requirement and the engineering solution that they developed for drainage on this site was not adequate. So, OCI has contacted the applicant and had them fix their drainage problem. They also had to force the applicant to put in the required landscaping. As it turned out, the landscaping that they put in did not meet the landscaping requirements, so they are continuing to work with the applicant on those issues.

HENTZEN I want to submit to the Planning Commission (inaudible).

DUNLAP The little tiny stripe what's the width of that?

MCNEELY That is 25 feet X 292 feet.

BISHOP I beg your pardon, what tiny stripe are you talking about?

MCNEELY Indicates on map.

RICK REXROAT, 5735 S BROADWAY agent for this applicant, My interest here is that I am the one that is proposing the nightclub, I will operate and own the nightclub part of this business.

Some history, several years ago this was a nightclub. It is operating as a drinking establishment under the Heritage Restaurant license. So we are serving alcohol, and we are having karaoke on Friday nights, and we are basically operating like a nightclub but the difference is that we operate underneath the Heritage Restaurant license, which requires 51% food.

There is access to the proposed nightclub area today from the inside of the building, and that is how we operate and we serve food across the line. The difference from the way that it is being operated today and the way that we propose to operate tomorrow is that door that connects that restaurant to the proposed nightclub area would have to remain locked during business hours. Thus separating the two businesses completely.

As far as the Conditional Use, what I did was took the existing parking lot that is out there today and request for Conditional Use. The patrons for the nightclub would probably not go any further north than the building itself, so that northern half of that parking lot that we are looking at probably would not be used for nightclub business. I could not hold that many people in the night club if we were to fill up that parking lot.

It has been operating here for 18 months underneath the Heritage Restaurant and Pub license and we have had no issues with noise, police, or lighting. We do not propose any additional lighting in front of the building so this not being detrimental to the residence and the surrounding area. If it has been detrimental in the last 18 months then I will agree but we have not heard anything of that nature at all.

I have been associated with the club as a performing person there or since November 1, 2004. I have taken over the management of the club. As far as their past experience with the property owner, I will tell you that he is Asian. He speaks very broken English and he has a hard time understanding, and it would not surprise me if he thinks he is in compliance. If he is not I will be more than happy to be a mediator, and bring the issues up to him to see if we can't resolve this. He has taken care of the drainage problem. That was a mistake and he did not realize it was going to be a drainage problem until it happened, and has since then created a drainage ditch to bring that water from behind the storage units onto to parking lot. The front of the storage units, the east side of the storage units, that has remained a field that he did not pave that as a parking lot to help absorb the water from that direction. As far as the landscaping requirements, I don't know what they were. There are some planted trees there, and they are small trees now but where they are to the requirements I don't know. I am sure that Tom would have if he understood but I think he thinks it is adequate.

I started writing down the pros and cons why we should not make this a nightclub, and on the con side I have not come up with anything. On the pro side you will have two health department licenses that will have to be granted in that area instead of one. The liquor license will stand on it own, thus the City will have control over the nightclub separate from the restaurant. They will also have a restaurant license. If there are issues with the nightclub the City can handle it. If there are issues with the restaurant, the City can handle it as it is now both businesses will be gauged by the action of the other. To me that in itself is a major plus on why we should let this be a nightclub. Years past the nightclubs that were there were questionable but that was under different property owners, and different management of the restaurant and the club. I think that was some 20 years ago when those issues where around. So the noise and the lights are no different than what they have had in the last year which we have no complaints.

The entrance of the nightclub is well over 300 feet to the residential. That residential corner, if you look at that lot that is a corner lot, and that backyard is a good 150 feet deep, so from house to building we are pushing 400 feet; and from house to nightclub is probably closer to 500 feet. That particular corner lot is owned by the applicant. So the residences that are concerned are further away, yet.

SHERMAN I'm not real clear, do you own the restaurant as well?

REXROAT No, I do not own the restaurant. I have made a proposal to the property owner, which owns the restaurant, to allow me to go in there and lease that portion of that building so I can open a nightclub.

SHERMAN Your currently operating a nightclub under their license?

REXROAT Under their license, and I am a hired manager.

SHERMAN So they actually own the nightclub now?

REXROAT They own the club or the drinking portion of the license right now. Tomorrow, if this is granted, I would have to make application for a drinking license or alcohol license both to the State and City on my own.

SHERMAN You would own that portion of the business and you would be renting from him?

REXROAT Right.

SHERMAN Then when you said the applicant lives in the house is that you or Mr. Thomas?

REXROAT Mr. Thomas Yun lives in the house.

BISHOP I am curious as to what the need for a nightclub is if it is already functioning as an entertainment venue, what is the difference?

REXROAT It would allow me to operate a business and I would like to be the business owner. My accountant right now has a nightmare going on because the proper law statements that the business is making now has to go through my accountant then his accountant then gets absorbed as one unit, and then Tom and I are trying to figure out who gets paid what. I am subject to anything that is imposed onto the Heritage Restaurant and Tom is as vulnerable to anything that might be imposed on the nightclub because it is one unit.

DOWNING What are the hours of operation of the establishment now?

REXROAT The restaurant is open 24-7 day a week and the proposed nightclub will be opened 2 p.m. to 2 a.m. It was open from 4 p.m. to 2 a.m. so I am increasing the hours by two hours.

SHERMAN Please clarify about the door. The door is pivotal to you owning the club and he owns the restaurant because right now there is general access between the two?

REXROAT Yes.

SHERMAN So you are working as a manager under his license?

REXROAT Yes.

SHERMAN So he owns both operations. So you are going to pull out and own that portion of it, and you want this door to be closed?

REXROAT That door will have to remain locked or blocked and that is coming from the State requirement.

SHERMAN Is there an outside door where you can gain access to the outside?

AUDIENCE I can't hear.

BISHOP Where is the separate door?

REXROAT Points on the map.

SHERMAN Does the restaurant serve liquor on its own or do they go next door to the nightclub.

REXROAT Right now the restaurant does not allow liquor sales.

HERNANDEZ Everything will remain the same except for the accounting practices and the door and the licenses?

REXROAT Essentially, yes. I need to understand the City of Wichita's drinking establishment's requirements because I believe I will not be able to have a cabaret license under a drinking establishment, which will allow patrons to dance. I have not got that clarified yet, but I believe if it is a drinking establishment you cannot have an area for people to dance.

GIBBS You is continuing food service into the club?

REXROAT As we operate today yes.

GIBBS That is your intent in the future?

REXROAT No, I do not have the equipment in that area that I have marked off to prepare food.

GIBBS You can't even have a fast food window or anything?

REXROAT Not at this time.

SHERMAN In the future you will not have food in your place?

REXROAT The restaurant will operate as a restaurant and I will operate the club next door.

MITCHELL On page 3, Number 2, the last sentence says that the site is suitable for the existing restaurant. Are you saying that it would not be suitable for a nightclub? If so, is that only because of the distance to residential property that would be unsuitable condition?

MCNEELY Yes, the distance and the fact that this would instead of being a "DE-R," drinking establishment with restaurant, which is more like Applebee's or Chili's, not a drinking establishment. This would become the entire Conditional Use site, a drinking establishment. The entire site could be used for an exclusively drinking site without the food requirement.

MITCHELL Again, the only requirement that it doesn't meet is the distance to residential property?

MCNEELY That's basically the issue that staff found with the complaints, with the neighbors, is that they did not want parking or the nightclub that close to their residences.

MITCHELL That is not my question. Regardless of what the neighbors say only this qualification of the site is the distance to residential properties?

MCNEELY Yes.

MARNELL is the residential property that would require the permit only the owner's property or are there others?

MCNEELY There are others within 200 feet as well.

DUNLAP Are there others in the audience that would like to speak on this issue? We will close the public hearing.

GAROFALO I want to know what the Conditional Use permit would cover, what area?

MCNEELY The Conditional Use permit would cover on the site plan 1.45 acres.

GAROFALO Would this just cover the nightclub portion of the building?

MCNEELY The Conditional Use would cover where the nightclub would take place and all parking associated with it. So the Conditional Use application would cover everything you see that is east of this dashed line here that I am indicating on the site plan. So it is the eastern half of the property owned by Mr. Yun.

GAROFALO What about parking?

MCNEELY All the parking included (shows on map). When you request a Conditional Use for a nightclub or other uses the parking that supports that Conditional Use has to be included within the Conditional Use as well.

SHERMAN What would keep that from having the restaurant from becoming a bigger nightclub?

MCNEELY Exactly, or the building could be leveled and a larger nightclub could be built on the site.

SHERMAN Then that would make it in non-compliance to the requirement of the minimum distance?

MCNEELY No, if this Body grants a Conditional Use, the Conditional Use will be for that entire area to include all of its parking and a nightclub can go anywhere on that site once it is approved.

MARNELL I thought on Conditional Use Permits that we could put conditions on them.

MCNEELY You can make them subject to a site plan.

MARNELL If the applicant who is here, not the parcel owner of the land, if he had to lease that area and then leased the area of the parking lot that would obviously serve this would that still fit then or not?

MCNEELY There is no way that this applicant could do a Conditional Use on this site to where it is not within 200 feet of residences. He met with us on a Friday afternoon during development review. We went through this and informed him of the issues that the residents had, and got out the engineering scales and looked at all the measurements all the way around it, and there is no way that you could develop a drinking establishment or nightclub on the site and not be within 200 feet of residences.

MITCHELL Mr. Schlegel, what action would the Planning Commission have to take to waive or reduce the distance requirement if we recommend approval of the application?

SCHLEGEL It would have to be a condition of the approval of the application.

ORIGINAL MOTION: To approve the zone change and deny the Conditional Use request based on staff recommendation at this time.

BISHOP moved, **GAROFALO** seconded the motion.

SUBSTITUTE MOTION: To approve both the zone change request and the Conditional Use request.

HENTZEN moved, **MARNELL** seconded the motion.

BISHOP I would like to say the District Advisory Board will not hear this case until December 1st.

HENTZEN This meeting was scheduled to hear this case in this room at this time. I would ask that my substitute motion be voted on today.

MCNEELY Staff would like to clarify what the conditions of the Conditional Use would be? The conditions of the Unified Zoning Code and the submitted site plan?

WARNER I think it means that you can't expand the club into the other side.

DUNLAP So we are approving what is on the site plan.

SUBSTITUTE MOTION: To approve both the zone change request and the Conditional Use request and to comply with what is on the site plan.

HENTZEN moved, **MARNELL** seconded the motion, and it carried 8-3; **SHERMAN, GAROFALO, BISHOP** opposed.

4. Case No.: DR2004-12 – Request Adoption of amendments to the April 19, 2001 Edition of the Wichita-Sedgwick County Unified Zoning Code. The amendments to the Unified Zoning Code propose to amend Section III-C.2.a. and b. dealing with the purpose section of the Community Unit Plan Overlay District, and Nonresidential Community Unit Plans to clarify the term “unified control” and to clarify the minimum square footage of gross floor area or acreage required in order to require a Community Unit Overlay District.

In early 2004, the MAPC asked staff to review the Unified Zoning Code minimum standards that trigger the requirement for applicants requesting Limited Commercial or General Commercial zoning to also submit companion Community Unit Plans (CUP). This request was made in response to a number of applications that were for sites whose size was just under the minimum six-acre size (under unified control) that requires a CUP.

Currently, CUP overlay districts are required for zoning requests for LC Limited Commercial and GC General Commercial zoning whose acreage is six acres or larger and under unified control at the time of initial approval.

There was a perception by some of the planning commissioners that applicants were purposely submitting applications for sites just under six acres to avoid filing the companion CUP. There was also some evidence that some applicants were asking for LI Limited Industrial or NR Neighborhood Retail zoning, instead of LC or GC zoning, since the LI and NR districts do not trigger CUP requirements. There has also been some disagreement as to what the phrase “under unified control at the time of initial approval” meant.

On July 12, 2004, staff presented draft language to that planning commission that addressed these concerns, and the planning commission directed staff to proceed with the proposed amendments. The attachments to this memo contain the proposed language:

1. Section III-C.2.a. of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) is hereby amended to read as follows:
 - a. Purpose. The Community Unit Plan (CUP) overlay district is intended to provide well planned and well organized developments for residential uses of varying densities and for office, commercial, industrial and/or mixed uses that are held under unified control. Unified control means a contiguous site, all of which site is owned by one person (individual, partnership or corporation of any type) or leased by one person at the time of rezoning or building permit application for any portion of such site. It is intended to protect the public safety, convenience, health and general welfare through standards and provisions that establish requirements as to lot coverage, height, setback and screening that permit review of the size, shape and location of such facilities with due regard to the tract, lot or parcel as a whole so as to ensure the development of facilities with proper ingress and egress, parking, drainage facilities, screening, sign control, environmental control and other requirements and amenities. The character of the development should be appropriate to the neighborhood and conditions and safeguards should be provided to ensure that the development would minimize any diminution, if any, in value of surrounding property. Two types of CUP regulations are set out in this section: Nonresidential and Residential. Additionally, a unified Nonresidential and Residential CUP can be developed so long as it adheres to the CUP requirements of Secs. III-C.2.b. and III-C.2.c.

2. Section III-C.2.b. of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) is hereby amended to read as follows:

- b. Nonresidential CUPs. The following nonresidential CUP regulations shall apply to development or construction on sites with a contiguous area of six acres or more or on any tract, lot or parcel proposing 39,000 square feet or more of gross floor area that are held under unified control (as described in Sec III-C.2.a. above) that are now or hereafter zoned NR, LC, GC, LI or GI or a combination thereof. If a nonresidential tract, lot or parcel is zoned NR, LC, GC, LI or GI in combination with a P-O Protective Overlay district, compliance with the nonresidential CUP regulations of this section shall not be mandatory. At the property owner's discretion, the nonresidential CUP regulations may also be applied to sites that are less than six acres in size that are under unified control and that are now or hereafter zoned either LC, GC, LI or GI, and on lands of any size that are now or hereafter zoned either NO, GO, NR, CBD, OW, IP or U or a combination thereof.

The attached "Annotated Amendment to Sec III-C.2.a. and b." delineates the existing language and the proposed language.

Staff recommends that the Commission approve the proposed amendments.

DALE MILLER Planning staff presented the staff report.

BISHOP I'm not necessarily opposed to that at all, but I do want to clarify one thing. I am assuming that the Dillions size at Central and Rock Road... but if you were looking at this and that was 5.9 acres accumulative, you would be adding the floor space of Chili's and the floor space of others?

MILLER Yes, what I as trying to do is that. I didn't think that the intention was that if someone wanted to build a stand-alone grocery store on a site that we would necessarily want them to have to do a CUP. I was trying to get some number that would be reasonable based on what is happening in the market place so that we would catch those multiple tenant sites that we are actually after.

DUNLAP On the flipside is where we do pad sites along the grocery store, we should do a CUP.

MILLER Yes, so it seemed like these general numbers were hitting those targets that we were after.

DUNLAP Do we tie it to the number of pad sites or is it still a cumulative total of square footage?

MILLER I don't think we care how many pad sites are there. I think the critical number is the square footage. I don't think this Commission cares if there are two building sites in the CUP and they both contain 80,000 square feet or whether it is one building and it contains 80,000 square feet. The important thing is that you want the CUP triggered and the way to do that is to establish that minimum threshold with the square footage.

DUNLAP I personally feel better about this instead of Protective Overlays. I would prefer to call them Restrictive Overlays. I think we should write that number down before we vote on it.

MITCHELL Are you suggesting that we come back and look at this with the proposed number change before we vote on it?

DUNLAP Yes.

HENTZEN What do we have now and what are we changing to?

MILLER Currently if you are filing a zone change that involved "LC" Limited Commercial or "GC" General Commercial zoning and the property is 6.0 acres or larger and it is under unified control then you are required to file a CUP with that zone change.

What we would be doing with this proposal is we would expand the requirement for CUP's to be filed to not only include "LC" Limited Commercial and "GC" General Commercial, we would drop it down to pick up "NR" Neighborhood Retail and bump it up to pick up "LI" Limited Industrial and "GI" General Industrial districts as well. As long as they are 6.0 acres or more or have the 39,000 square feet for the "NR" Neighborhood Office; the 60,000 square feet for the "LC" Limited Commercial or "GC" General Commercial, and the 120,000 square feet with the "LI" Limited Industrial and the "GI" General Industrial.

HENTZEN Have any of the major developers been involved in this decision?

DUNLAP I was going to ask the same question. Because we are not in that business and if we are creating a new roadblock we ought to know it. I don't think we are relaxing the standards here by any means.

SCHLEGEL This request came from the Planning Commission.

DUNLAP What we were looking for was a better definition so we would be faced with people that we thought were trying to sneak by the edge. I think we are going to do that here but I would really like to see those gradual steps and maybe have 2-3 developers like George Laham and maybe Slawson, have a look at it.

GAROFALO What makes the 6.0 acres the standard? Why not 5.0 acres?

MILLER I think it is based on when the C.U.P. Ordinance was first adopted and when the City of Wichita established what we call the checkered board-zoning pattern. I think that is where the 6.0 acres came from. Because if you look at the intersection of

section line roads there are on many of those intersections 6.0 acres of "LC" Limited Commercial on each of the four corners so there is a total of 24 acres. The adoption of the C.U.P. portion of the Zoning Code came very close, in fact, just in advance of when the City of Wichita went out and established that zoning pattern all around the edge of what was then the City Limits of Wichita. I think whoever was helping them thought that 6.0 acres was an appropriate amount of zoning for commercial development, and it is just a number that is plucked out of the air based on experience and what they thought the anticipated need for commercial activity was going to be.

BISHOP About what year would that be?

MILLER About 1958.

DUNLAP Do we need to take action?

MOTION: Defer indefinitely to work with the development industry and amongst themselves to come up with something that would work.

MARNELL moved, **WARNER** seconded the motion, and it carried (11-0).

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- ❖ **PLANNING COMMISSION ITEM**
5. Additional presentation on the 21st Street Revitalization Plan.

JOHN SCHLEGEL Handed out a draft report of the plan and responded to questions.

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- ❖ **MPO ITEM**
6. Review the Unified Planning Work Program (UPWP) for 2005.

The Unified Planning Work Program (UPWP) is the MPO's document identifying projects, programs and initiatives for the fiscal year. The document is required by federal law, and is the basis for receiving and expending federal transportation planning funds.

Transportation Planning funds from the US DOT provide for the salary of nine (full-time equivalent) staff positions, and all other expenses of the Transportation Division, including transportation studies, contractals, commodities and capital outlays. The proposed UPWP document includes projects and programs from January to December 2005. Several projects are repeated each year, such as compilation of the Transportation Improvement Program, monitoring and reporting of transportation data, and providing the coordination between different levels and units of government. However, some of the major projects include:

- Revising the MPO's planning boundary and representative membership
- Approving and implementing the Public Involvement Policy
- Updating the 2030 Transportation Plan
- Coordinating the South Area Transportation Study
- Coordinating Intelligent Transportation System (ITS) projects
- Completing the ITS Regional Architecture
- Updating and implementing the Congestion Management System (CMS)
- Developing a project selection criteria and a TIP update/ amendment process

The UPWP has been presented to the MPO on November 18, 2004 for review and comment. The Technical Advisory Committee (TAC) reviewed the draft UPWP on November 22, 2004 and recommended adoption. At that time an official comment and review period began to assure public involvement in the development of the document. Comments were received through December 3, 2004. Resolutions have been presented/scheduled for the Board of Sedgwick County Commission and the City of Wichita, which provides for an interlocal agreement authoring the MAPD to execute the UPWP. With this second presentation of the UPWP to the MPO we are requesting adoption of the document and approval of the joint resolution providing for the execution of the UPWP by the MAPD.

Recommendation: Review the draft 2005 UPWP and provide comments to staff.
Establish December 9, 2004 as the public meeting date to adopt the 2005 UPWP.

Attachment: Draft FY 2005 UPWP

JAMSHEED MEHTA Planning staff introduced Nancy Harvieux, the new Principal Planner in the Transportation Division, and also mentioned that all staff positions were now filled.

DUNLAP With the addition of Transportation staff does that mean we will get caught up and not get anymore nasty letters from KDOT?

MEHTA That is up to KDOT. It is a fact that sometimes depending on who is writing the letter the matter gets a little elevated higher than where it should be. Instead of providing comments back to staff on the UPWP, one of the transmittals included a list of unrelated issues.

DUNLAP Hopefully we will get caught up.

NANCY HARVIEUX Provided an overview of the draft 2005UPWP using PowerPoint slides.

DUNLAP We are going to approve this on December 9th and ask the City from their recommendation on the 14th?

HARVIEUX They won't be recommending the actual document, what they will be recommending is the approval of a resolution that allows us to use salaries as in-kind for the match for the federal money, but not the actual working document itself.

MOTION: Establish December 9, 2004 as the public meeting date to adopt the 2005 UPWP.

GAROFALO moved, **BISHOP** seconded the motion, and it carried (11-0).

The Metropolitan Area Planning Department informally adjourned at 3:21 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2004.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)